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MOTION

APPLICANT FOR INTERVENTION CHARMAINE R. TORRES (“Applicant”), on behalf of herself and all others similarly situated, respectfully moves this Honorable Court to vacate the August 9, 2004 opt-out and objection date in connection with the proposed settlement agreement in this action, and to vacate the September 9, 2004 hearing date for final approval of the settlement agreement. This motion is supported by this filing, the files and records in this case, the arguments of counsel, and such oral and documentary evidence as may be submitted and presented at the hearing on this motion.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION

In support of this motion, Applicant states that:

1. On July 6, 2004, Applicant, on behalf of herself and all others similarly situated, filed a motion with the Court for leave to intervene in this action as a plaintiff/petitioner.

2. On June 29, 2004, Applicant for Intervention Christina Naputi also filed a motion to intervene in this action as a petitioner.

3. Both motions seek leave to intervene in order to protect interests that are at stake in this action regarding claims for unpaid earned income credits (“EIC”). Both applicants seek to challenge the validity and fairness of the settlement agreement entered into by Petitioner Julie Babauta Santos and Respondents, which this Court preliminarily approved on June 17, 2004.

See Stipulated Order Granting Preliminary Approval of Class Action Settlement ("Stipulated Order") (filed June 17, 2004).

4. The Court has set a hearing on both motions for August 2, 2004, at 3 p.m., only a week before the objection and opt-out date of August 9, 2004 under the Stipulated Order. The Court has also set a hearing date of September 9, 2004, for final approval of the settlement agreement.

Page 2 of 5

**Julie Babauta Santos v. Felix P. Camacho et al.,
Civil Case No. CV04-00006**

Motion and Memorandum of Points & Authorities in
Support of Motion to Vacate August 9, 2004 Objection
and Opt-Out Date And To Vacate September 9, 2004
Hearing Date for Final Approval of Settlement Agreement
Request for Expedited Hearing and Briefing Schedule

5. The August 9, 2004, opt-out and objection date should be vacated at this time, and revisited after the Court has ruled on both motions to intervene and applicants have been allowed to present their views and positions regarding the instant proceedings, including the proposed settlement.

6. Maintaining the current August 9, 2004 opt-out date and the September 9, 2004 fairness hearing date would prejudice the interests of Applicant. If Applicant does no opt out of the class by August 9, 2004, and the settlement agreement is approved over the objections of Applicant, the settlement will be binding on her and all claims regarding earned income credits (“EIC”) against the Government of Guam will lost. Settlement Agreement § III. On the other hand, if Applicant opts out of the class and pursues separate claims against Respondents, she may be faced with a worthless judgment if no funds remain to pay for claims of members who opt out. The \$60 million settlement fund sets aside no money for payment of claims by persons who opt out of the class. Accordingly, the settlement agreement essentially forces class members to stay in the class or risk non-payment of their EIC claims. Applicant and the class she represents should not be forced to make the decision to opt-out of the class until the Court has had the benefit of Applicant’s views and positions regarding the proposed settlement. Applicant cannot meaningfully participate in this action until the Court grants her motion for leave to intervene.

7. The August 9, 2004 opt-out and objection date should be vacated for an additional reason. The Stipulated Order requires that “Notice shall be published a total of three (3) times in both the Pacific Daily News and the Marianas Variety, once per week for three (3) consecutive weeks beginning the week of June 21, 2004, and ending on the last publication date of July 9, 2004.” Stipulated Order § 10(B). The Stipulated Order provides for an opt-out and objection deadline “of August 9, 2004 or thirty (30) days *after the last publication date of the Notice required.*” *Id.* § 11 (emphasis added).

8. It is unclear whether the notice was provided as required by the Stipulated Order. Applicant is informed and believes that notice was published only once in the Pacific Daily News, on June 27, 2004. Furthermore, no notice was published on July 9, 2004, which, under the Stipulated Order, was supposed to constitute the “last publication date.” *Id.* § 10(B).

9. Such defects in the notice requirement alone constitute grounds for vacating the August 9, 2004 opt-out and objection date. Without being adequately informed about the proposed settlement and their respective rights thereunder, putative class members should not be forced to opt-out or object to the proposed settlement by August 9, 2004. The August 9, 2004 date presumes that adequate notice to class members has been provided. Because adequate notice has not been given, the August 9, 2004, date cannot stand.

10. Because the August 9, 2004, date must be vacated, the September 9, 2004 fairness hearing must also be vacated. Under the Stipulated Order, the fairness hearing date is tied to the opt-out and objection date. Stipulated Order § 12 (“Petitioner and the Government of Guam request that the Court set a hearing on final approval of the Settlement for a date that is approximately thirty (30) days after the Objection and Opt Out Date.”).

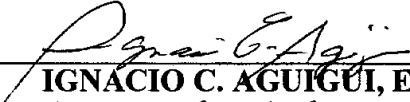
For the foregoing reasons, Applicant respectfully asks that the Court vacate the August 9, 2004 opt-out and objection date and the September 9, 2004 hearing date for the final approval of the proposed settlement agreement. Applicant asks that the Court revisit the issue of establishing new dates after the Court has ruled on the pending motions for leave to intervene. Furthermore, Applicant requests that the Court order Petitioner Santos to publish notice in the Pacific Daily News and the Marianas Variety informing putative class members that (1) they are not required to file written objections or written requests to opt out of the class by August 9, 2004; (2) that the September 9, 2004 hearing date for final approval of the settlement agreement is vacated; and (3) other matters as deemed appropriate by the Court.

1 **REQUEST FOR EXPEDITED HEARING AND BRIEFING SCHEDULE**

2 Applicant respectfully asks the Court to set a hearing date for this instant motion, and
3 briefing on the instant motion on an expedited schedule. Applicant requests a hearing date this
4 month. In the alternative, if the Court deems that a hearing would not be necessary in this matter,
5 Applicant would have no objection to this motion being decided on the pleadings submitted. If
6 the Court grants the instant motion to vacate the August 9, 2004 objection and opt-out date,
7 sufficient time will be needed to make arrangements for the publication to class members prayed
8 for in this motion.

9 Respectfully submitted this 12th day of July, 2004.

10 **LUJAN, AGUIGUIT & PEREZ LLP**

11 By: 

12 IGNACIO C. AGUIGUIT, ESQ.

13 *Attorneys for Applicant for Intervention
Charmaine R. Torres*

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27 Julie Babauta Santos v. Felix P. Camacho et al.,
28 Civil Case No. CV04-00006

28 Motion and Memorandum of Points & Authorities in
Support of Motion to Vacate August 9, 2004 Objection
and Opt-Out Date And To Vacate September 9, 2004
Hearing Date for Final Approval of Settlement Agreement;
Request for Expedited Hearing and Briefing Schedule